

OREGON STATE SENATE BILL 750
THE "DERFLER-BRYANT" ACT OF 1995

LAST BEST OFFER -- TOTAL PACKAGE ARBITRATION:
AN ANALYSIS OF CHANGE IN INTEREST ARBITRATION
FOR OREGON'S PROTECTIVE SERVICES

STRATEGIC MANAGEMENT OF CHANGE

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ABSTRACT

This research project examined the changes made to Oregon's Collective Bargaining Act by Oregon Senate Bill 750, known as the Derfler-Bryant Act. The problem was to determine the impact on interest arbitration for Oregon's protective services which include, fire, police, and corrections. The purpose of the research was to understand the implications of change from conventional interest arbitration to "Last Best Offer Package" interest arbitration, define the statutory criteria, determine how arbitrators have applied the revised criteria, and identify trends in the post SB750 interest arbitration awards.

The project employed descriptive research methodology to answer four research questions: What significant changes has SB750 had on the Oregon Public Employee's Collective Bargaining Act (PECBA) as it pertains to interest arbitration, and what are some of the other forms of interest arbitration as a comparison? Has SB750 been successful in shifting the advantage back toward employers in Oregon's interest arbitration process for the protective services? What effect has SB750 had on the issues brought to interest arbitration? How are arbitrators applying the statutory criteria, and have any unintended consequences developed?

The procedure involved a literature review of material obtained from the Employee Relations Board through the City of Eugene Human Resources and Risk Services Department, the University of Oregon's Labor Education and Research Center, and the University of Oregon's Law School. In addition to the literature review,

nineteen of the twenty post SB750 arbitration awards were acquired. These cases were analyzed by issue, package and award.

The major findings from the post SB750 arbitration awards were that employers are prevailing in the LBOP interest arbitration process, the issues carried forward to arbitration are primarily related to economics, in particular, general wage increases, and the change in statutory criteria under SB750 has changed the strategy practitioners are employing from those previously used in conventional interest arbitration.

The primary recommendations arising from this research are to attempt resolution of as many issues as possible in the bargaining process. If arbitration is inevitable, the number of issues included in the LBOP should be limited to as few as possible with an emphasis placed on issues of economic concern.

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INTRODUCTION

Senate Bill 750, known as the "Derfler-Bryant Act," was enacted by the 68th Oregon State Legislative Assembly during the 1995 Regular Session. This bill modified Oregon's Collective Bargaining Law as defined by the Public Employee Collective Bargaining Act (PECBA). Although the statutory changes associated with SB750 impacted six broad areas, this applied research project focused on the impact on interest arbitration for Oregon's protective services; fire, police and corrections. Although grievance arbitration was also impacted by SB750, it was not addressed in the research.

Under SB750, arbitrators are now limited to selecting one "final offer package" with no compromise or modification. Arbitrators are defined by statute as "qualified, disinterested, and unbiased persons." ORS 243.746 (2).

Prior to the enactment of SB750, the Oregon Revised Statutes (ORS), provided for conventional arbitration. Under conventional arbitration arbitrators have the authority to accept, modify or amend either party's offer by individual issue on its own merit. SB750 also modified the criteria that arbitrators must apply when selecting one or the other party's final offer package. By placing more emphasis on public interest concerns and ability to pay, this legislation was enacted to correct what was perceived by some SB750 proponents to be a "serious imbalance in the previous public sector collective bargaining laws." (Thomas 1995) Whether there was an "imbalance" or not remains a hotly contested issue.

The mechanics of the "final offer package" arbitration process are best summed up in the following brief description of the process by arbitrators John Abernathy and Tim Williams:

The parties in Oregon submit their final offers to the mediator, following a declaration of impasse. The mediator makes public the final offers, and, for the protective services, the dispute goes to interest arbitration. Fourteen days before the arbitration hearing the parties submit last best offer packages on all unresolved mandatory subjects of bargaining to each other, and presumably to the interest arbitrator. The interest arbitrator's authority under SB750 is restricted to choosing one of the last best offer packages -- i.e., the choice is by total package, not issue-by-issue. The interest arbitrator has no authority to change, modify, or eliminate any part of a last best offer package, even if a part of the package is potentially incorrect. (Abernathy and Williams 1995)

The purpose of this research was to analyze the changes and impacts of SB750 on the collective bargaining process, specifically interest arbitration. To quantify the results of these changes, post SB750 arbitration awards were used to evaluate the experience since the bill's enactment in 1995. The information acquired from this research will then be used by the Eugene Fire & EMS Department to better understand the advantages and limitations imposed by the legislation, and develop collective bargaining strategies to be applied in the post SB750 environment.

Descriptive research methodology was used to understand the change in law,

and to analyze the public safety arbitration awards since its enactment. The following research questions were applied to the information and data obtained in the course of this project:

- 1) What significant changes has SB750 had on the Oregon Public Employee's Collective Bargaining Act (PECBA) as it pertains to interest arbitration, and what are some of the other forms of interest arbitration as a comparison?
- 2) Has SB750 been successful in shifting the advantage back toward employers in Oregon's interest arbitration process for the protective services?
- 3) What effect has SB750 had on the issues brought to interest arbitration?
- 4) How are arbitrators applying the statutory criteria, and have any unintended consequences developed?

Limitations:

Correlational research would have provided the best comparative measure of the effects of SB750 by comparing post enactment results to those previously achieved under the old collective bargaining law. However, there were two major limitations that precluded the use of this methodology. The number one limitation was the relative inexperience of employers, employee representatives, and arbitrators in working under the new statutory requirements. It would be very difficult to accurately isolate those elements related to errors in judgement and inexperience of the parties

operating under the new system. The probability of these errors skewing the data prevented pursuing this form of research.

The second limitation was that Oregon has experienced a different economic environment in post SB750 than it did prior to this legislation. This fact would also affect any results associated with a comparison of the arbitration awards before and after its enactment. Because of this fact, descriptive research methodology was selected as a more reliable tool of analysis.

Since the enactment of SB750 in 1995, twenty arbitration cases have been decided. Although not considered a limitation, only three of the twenty post SB750 arbitration cases involved fire departments or districts. The remaining seventeen cases involved law enforcement or corrections. Although this research project was prepared for the fire service, police, corrections and the fire service are all considered protective services in the State of Oregon, and as such, they are all bound by interest arbitration and subject to the statutory changes under SB750. Therefore, the data generated by all twenty arbitration cases was considered relevant in this research project.

BACKGROUND AND SIGNIFICANCE

With the statutory changes made to the Oregon Public Employees Collective Bargaining Act by Senate Bill 750, the protective services have been confronted with bargaining in a new and unknown environment. This situation poses a significant challenge for both employers and public safety labor unions who must now rethink their bargaining strategies and how the end game of interest arbitration should be

played. The negotiation and interest arbitration process presents itself much like a "high stakes" poker game where either side can lose on all issues because of a technical error unknowingly built into their package, or by overloading their respective package with too many issues.

To compound the complexities of the post SB750 bargaining and interest arbitration environment is the fact that the City of Eugene's financial stability has declined in recent years due to a number of property tax limitation measures that have been enacted in the State of Oregon. To make understanding the statutory changes even more urgent is the fact that the City's Fire and Emergency Medical Services Department is currently in contract negotiations with its firefighter's union, IAFF Local 851. With this negotiation process comes the potential for a significant increase in operational costs should the negotiations reach impasse, go to interest arbitration, and the Union prevail with a high wage package.

It is essential that the City's bargaining team fully understand the changes imposed on the interest arbitration process, and how the law is being applied by arbitrators in the post SB750 interest arbitration awards. The intent of this research was to develop an in depth understanding of the Last Best Offer Package Arbitration process. It was also important to identify and understand the relevance of the change in statutory criteria, and to determine how arbitrators apply weight to each criterion in selecting one or the other package.

Relevant data was also extrapolated from the twenty protective services

arbitration awards since the enactment of SB750. The research was then directed to quantify the issues, and identify any trends which might help the City of Eugene successfully bargain a fair and reasonable successor contract with the firefighter's union. With the statutory changes promulgated by SB750, the City's bargaining team has been thrust into a position of operating under new collective bargaining rules that are not fully understood.

This research project addresses managing change as it relates to rethinking negotiation and arbitration strategies from those developed through previous experience. Managing change was the general theme of the Strategic Management of Change course taught at the National Fire Academy and attended in June of 1998.

LITERATURE REVIEW

The literature reviewed for this research was taken from a variety of sources. Although an attempt was made to locate fire service publications which addressed the topic, the change in legislation was recent enough, and the scope significantly narrow to preclude much in the way of quality analysis from traditional fire service sources. Therefore, literature external to the fire service was acquired from sources which favor employer, employee, legislator and arbitrator perspectives. These different perspectives helped maintain a neutral focus in the analysis, and the presentation of facts.

To aid in assimilation, the acquired information was subdivided into four main sections which followed the research questions previously listed.

What significant changes has SB750 had on the Oregon Public Employee's Collective Bargaining Act (PECBA) as it pertains to interest arbitration, and what are some of the other forms of interest arbitration as a comparison?

The 68th Oregon State Legislative Assembly approved changes to the Public Employees Collective Bargaining Act (PECBA), in 1995, with the enactment of Senate Bill 750. "The Act (PECBA) had not been changed since its original adoption in 1973." (Towle 1996) Although the scope of bargaining and the subjects considered mandatory have not changed under SB750, the manner in which disputes are resolved after impasse has changed significantly. (Towle 1996) "Impasse" is that point in the collective bargaining process where both parties declare an inability to resolve further issues.

Marcus Widenor of the University of Oregon's Labor Education and Research Center describes PECBA as being "passed in a year (1973) of far-ranging legislative reform enacted by an emboldened Democratic majority." (Widenor 1996) Similarly, 1995 marked a swing of the political pendulum, "with a Republican majority seeking reform in numerous areas." (Widenor 1996)

To fully understand the intent behind this legislation, it is best to go directly to its two authors, Oregon State Senators, Derfler and Bryant. During the Senate Floor Debate on the SB750 Conference Committee Report, Senator Bryant stated:

The purpose of the bill is to re-balance the system (PECBA) that has fallen out of

balance in favor of labor. I say that as a preface because we know there will be hearings before ERB (Employee Relations Board) to determine exactly what our meaning is with the words placed in the bill. I want to say from the beginning that the purpose is to allow management to manage. The record will show that the intent of this legislation is to restore management rights in the collective bargaining system and to respond to Oregon taxpayer demands for accountability and efficiency from government. It should help all of our credibility." (Floor Debate, SB750 Conference Committee Report, Bryant 1995)

During the past twenty-two years, Oregon's protective services have been able to resolve bargaining disputes through conventional interest arbitration. Although the interest arbitration process is still in existence, the manner in which interest arbitration is conducted has changed considerably under SB750.

Conventional interest arbitration provides for both labor and management to submit disputed issues to the arbitrator and make arguments on an "issue-by-issue" basis. The arbitrator then weighs the evidence, considers both parties arguments, reviews other cases, and then renders an award based on the merits of each party's case. Under conventional interest arbitration, the arbitrator can render an award on each issue independently.

"An examination of conventional interest arbitration awards in Oregon from 1973 to 1995 shows that on some issues the employer's position prevailed, on other issues the union's position prevailed, and on a number of issues the arbitrator awarded

either an alternative or something between the employer's and union's position on the issue." (Abernathy, Williams 1996)

The proponents of SB750 felt that under the previous system of conventional interest arbitration, unions would frequently take a dispute to interest arbitration, even with a fair offer on the table, because at least a "little more" could reasonably be expected from the arbitrator. "Seldom if ever would an interest arbitrator award less than the public employer's table offer on a given issue." (Drummonds 1995)

The specific statutory areas impacted by SB750 and contained in ORS 243.746, are as follows:

- 1) The form of arbitration and the authority of the arbitrator.
- 2) The process of appealing a bargaining dispute to interest arbitration.
- 3) Selection of the arbitrator.
- 4) Submission of disputes to interest arbitration.
- 5) The new and/or revised arbitration criteria established by SB750.
- 6) The priority of the new criteria considered by an arbitrator.

From an interest arbitration preparation and presentation perspective, the statutory areas having the greatest impact on interest arbitration are the change in the form of arbitration from a conventional system to the "Last Best Offer Package (LBOP)," the revised arbitration criteria that an arbitrator must consider in rendering an award, and the priority that an arbitrator must give to the revised criteria.

New Form of Arbitration:

Changing Oregon's form of arbitration for the protective services was probably the most dramatic effect of SB750. Henry Drummonds, a current Willamette University Law School professor and past attorney for the Eugene Fire Fighters Association, IAFF Local 851, describes the shift to "Last Best Offer Package (LBOP)," as a system that forces parties to refine their offers, and go to arbitration with a reasonable package if they expect to prevail. (Drummonds 1995) LBOP, also known as "Veto Negotiations," requires the arbitrator to select "the entire final offer package of one of the parties and does not allow for an award to be made on an issue-by-issue basis." (Drummonds 1995)

Drummonds goes on to provide a succinct explanation of the change in system and the strategic elements of conventional arbitration that Derfler and Bryant sought to change.

"The veto negotiators, in adopting the final offer package system, sought to encourage the parties to reach voluntary agreements without interest arbitration.

The new system creates powerful incentives to move toward the other party's position; the former system invited the parties, especially public safety employee unions and the lawyers representing

them, to "hold out" on the theory that the arbitrator would compromise the positions of the parties making the award." (Drummonds 1995)

Carlton Snow, Arbitrator In the Matter of Interest Arbitration between Bend Firefighters and the City of Bend, Oregon (1996) states that "in theory, last best offer

arbitration should discourage parties from adopting extreme positions. The statute is designed to encourage decision-making by the parties within the context of a negotiated settlement.”

Revised Statutory Criteria:

The revised statutory criteria that an arbitrator must now follow in balancing the two LBOPs, and ultimately making an award, has also changed under SB750.

Specifically, the statute as found in [ORS 243.746(4)(a-h)], and provided below:

- a) Interest and welfare of the public.
- b) Ability to pay.
- c) Ability to attract and retain qualified personnel.
- d) Total compensation costs.
- e) Comparison of overall compensation with comparable

communities.

- f) CPI-All Cities Index, (commonly known as the cost of living).
- g) Stipulations of the parties.
- h) Such other factors.

Revised Priority of the Statutory Criteria:

The criteria prioritization requirement of SB750 divides the criteria into three basic levels. "Interest and welfare of the public," is delineated as a stand alone criterion and given the greatest weight. [ORS 743.746(4)(a)] The second six criteria are grouped collectively as a

secondary priority with their individual weight being determined by the arbitrator.

[ORS 743.746(4)(b-g)] The third and final level of consideration is the catch-all, "such other factors." [ORS 743.746(4)(h)]

Although the "interest and welfare of the public" can be subject to broad interpretation and is a somewhat nebulous criterion, it does give each party a platform from which to develop their case. It also gives the arbitrator a compelling point on which to base their position, although the statute does not specifically define "interest and welfare."

The arbitrator then determines the ranking and weight of the next six criteria. "If these primary and secondary criteria provide the arbitrator sufficient evidence for an award, the arbitrator does not consider the remaining criterion of such other factors." (Abernathy, Williams 1995)

If after addressing the first two levels of criteria the arbitrator feels that they need additional points for consideration, they may then take into account "such other factors" in deciding which parties' LBOP is best justified. These can be categorized as the more traditional elements of collective bargaining, i.e., "wages, hours, and other terms and conditions of employment. However, the arbitrator shall not use such other factors, if in the judgment of the arbitrator, the factors in paragraphs (a) to (g) (of the statute) provide sufficient evidence for an award." [ORS 743.746(h)]

As previously stated, John Abernathy and Tim Williams are both arbitrators, and

frequently used for dispute resolution in the State of Oregon. As such, both are very familiar with Oregon's Public Employees Collective Bargaining Act (PECBA).

Collectively they have restated the criteria into a series of questions which shed some insight into how an arbitrator may apply the criteria: (Abernathy, Williams 1995)

- 1) “Does the evidence show that it is in the interest and welfare of the public for the interest arbitrator to award the union's Last Best Offer Package?”
- 2) “Does the public employer have the ability to pay the union's LBOP?”
- 3) “Do the wage and benefit levels currently provided by the public employer enable that public employer to attract and retain employees?”
- 4) “How does the overall compensation of the employees in this bargaining unit compare with the overall compensation received by employees in Oregon communities of the same or nearest in population size?”
- 5) “How do the LBOPs of the parties relate to the CPI?”
- 6) “How should criteria two through six (b-g of the statute) be ranked?”

Other Forms of Arbitration as a Comparison:

During the research, information was also obtained on the different types of interest arbitration that are in place for the protective services in other states.

Although no other states with final offer interest arbitration have identical systems to Oregon's that could be used as a direct comparison, information was included below as a point of interest in seeing what other systems are used for dispute resolution. While this information was located in a number of sources, Anderson and Krause provided

the cleanest presentation of the various forms of interest arbitration by breaking them into five basic categories which are presented below: (Anderson, Krause 1993)

- 1) Conventional Interest Arbitration: Alaska, Main, Nebraska, New York, Pennsylvania, Rhode Island, Vermont, Washington State, and Wyoming.
NOTE: This form of interest arbitration existed in Oregon prior to SB750.
- 2) Final Offer, Each Party Provides Three Total Packages: Michigan, and Iowa.
- 3) Final Offer, Issue-by-Issue: Connecticut, Illinois, and Ohio.
- 4) Oklahoma Final Offer: Arbitrator's award is binding on the union but not on the public employer. "Public employer can reject arbitrator's award on an issue-by-issue basis." (Krause, Krause 1993)
- 5) Final Offer - Total Package: Hawaii, Minnesota, Nevada, New Jersey, Wisconsin, and now Oregon.

But which form of dispute resolution is the most effective in the settlement of labor contracts? Table 1 provides a summary of the information compiled from seventeen studies of thirty-eight public sector jurisdictions. (Hebdon 1997) From this information one can determine that the "right to strike," which isn't a viable option for most of the protective services, is actually an effective incentive in the settlement of labor contracts.

Table 1 also provides a breakdown of contract settlement rate, prior to a

declaration of impasse, by method of dispute resolution. This information is based on national statistics for 1996. (Hebdon 1997)

Table 1
CONTRACT SETTLEMENT RATE BY METHOD OF DISPUTE RESOLUTION

| METHOD OF RESOLUTION | RATE OF SETTLEMENT |
|---|---------------------------|
| Right to Strike | 94.7% |
| Combined Final Offer/Conventional Arbitration | 89.5% |
| Tri-Offer Arbitration | 89.5% |
| Final Offer-Issue Arbitration | 87% |
| Final Offer-Total Package Arbitration | 84.1% |
| Conventional Arbitration | 75.7% |

Has SB750 been successful in shifting the advantage back toward employers in Oregon's interest arbitration process for the protective services?

Since SB750 is so new and a relatively small number of interest arbitrations have occurred since its enactment, it was difficult to acquire literature which analyzed the subsequent results. Although data from the interest arbitration cases has been quantified in the "results" section of this applied research project, the literature reviewed was based more on prospective educated assumptions made by professionals in the labor relations field.

On, 2 June 1995, during the Senate Floor Debate on the SB750 Conference Committee Report, State Senator Derfler stated that the purpose of the legislation was in response to "the public demand for more responsible management of our public entities. It is our opportunity to show to the taxpayers of Oregon that we have heard their concerns and we have put their interests back in the bargaining process." (Floor Debate, SB750 Conference Committee Report, Derfler 1995)

Lon Mills, a Labor Relations Specialist for the State of Oregon, states that the crown jewel of SB750 is in the "interest arbitration provisions applicable to public safety negotiations." (Mills 1995) Mills goes on to say that, "the safety net for public safety unions is not nearly as safe as was the case with issue-by-issue arbitration. Public safety unions will, for the first time, be forced to negotiate realistically over a realistic number of issues." (Mills 1995) Mills thoughts seem to mirror much of the sentiment expressed by other management representatives and members of the Oregon Legislature who supported SB750.

"Some employers and unions will learn, early on, that greed kills. While true that, in the past, arbitrators tended to "split the baby," they seldom were able to split it exactly in half. This

was particularly onerous to management since the normal "baby" consisted of 80 percent union offensive proposals and twenty percent management defensive proposals." (Mills 1995)

Although only "five percent" of public safety employee disputes resulted in interest arbitration, there have been "seven times" as many interest arbitrations as strikes under the (old) PECBA. (Drummonds 1995) Therefore, it would appear that the system, whether the balance has been changed or not, has been successful in resolving disputes without an interruption in service delivery.

What effect has SB750 had on the issues brought to interest arbitration?

From the perspective of Nels Nelson, an arbitrator from California, "final offer arbitration works best when the number of issues is low and confined to economic interests." (Nelson 1975)

Likewise, arbitrators Abernathy and Williams contend that "Unions in the protective services will find it extremely risky under SB750 provisions to reopen the entire contract or a large number of contract articles. The ultimate risk is that they could lose on all of them." (Abernathy, Williams 1995) Each additional issue added to the party's LBOP increases the risk of losing the entire arbitration.

"Similarly, public employers will have to evaluate issues where they, in the past, made a stand based entirely on principle." (Abernathy, Williams 1995) This limiting of issues was part of the intent behind the "Derfler-Bryant Act," although it was more directed towards public employee unions rather than the employer. (Senate Floor Debate on SB750, 1995)

The arbitration preparation strategy for both employers and public safety

unions has changed dramatically under SB750. Again, based on their significant experience as arbitrators in multiple states, John Abernathy and Tim Williams recommend the following in preparing for LBOP interest arbitration:

As an effective strategy, each party should prepare two interest arbitration cases - an offensive one to support the changes sought and a defensive case to protect against loss. In conventional interest arbitration, protective service unions could emphasize their offensive cases. Their primary concern was what improvements could be won. Even if they lost an issue or two, it was not a total defeat. A loss often meant the continuation of an existing contractual benefit or the continuation of existing language without improvement. Last best offer package interest arbitration does not change the requirement to prepare an offensive and defensive case, but it shifts the emphasis to the defensive case. The first consideration now becomes what a party must do not to lose. (Abernathy, Williams 1995)

Although the intent of SB750 was to encourage both parties to work through their differences in negotiation and limit the number of issues brought to arbitration, there is still question as to whether the statutory changes have accomplished the goal Derfler and Bryant sought to accomplish. "One reason last best offer arbitration may not completely fulfill its theoretical promise of eliminating all genuinely negotiable items is that parties are still likely to calculate how they can appear less unreasonable than their counterpart while not compromising as fully as they might if faced with the

alternative of a strike or lockout.” (Coleman, Jennings, McLaughlin 1993).

How are arbitrators applying the statutory criteria, and have any unintended consequences developed?

Oregon State Senator, Portland Fire Lieutenant, and past Portland Fire Bureau Union President Randy Leonard views the legislative changes brought forth by SB750 in a different light. Described by Leonard as "anti-worker" legislation, SB750 was enacted by a Republican controlled legislature that sought to reduce the "so-called high number" of arbitrations in public safety employment. (Leonard 1995)

Leonard further argues that "instead of looking at the number of disputes involving firefighters and police officers that ended up in front of an arbitrator as a system that needs fixing, the tax-paying public will tell you that a process that resolves public safety disputes without strikes is evidence of a system that is working well." (Leonard 1995)

In Leonard's view SB750 amended PECBA without considering the facts, a position which is backed by at least some data. Jim Gallagher, a former University of Oregon Labor Education and Research Center faculty member, made an analysis of Oregon arbitrated settlements which averaged a 1.8 percent lower cost than those negotiated between public safety employees and their employers. (Gallagher 1983)

As has already been discussed, interest arbitration provides an alternative process for dispute resolution other than strike. This is essential for the protective services which are charged with providing continuous protection for the public they

serve. Arbitrators Abernathy and Williams assert that "the underlying goals of the process (interest arbitration) include promoting labor peace, achieving fair settlements, avoiding interruptions in services, and protecting the public interest." (Abernathy, Williams 1995) The problem is that the statute, as modified by SB750, has now raised new questions that will have to be answered through exercising the process. Abernathy and Williams have identified what they consider the most important of these questions as follows:

- 1) Final offer arbitration is structured so as to maximize the anxiety of the parties about the outcome of the process. Doing so is supposed to encourage the parties to settle without resorting to interest arbitration. No doubt the anxiety level of the parties will rise under SB750, but will that fact reduce the number of interest arbitrations and reduce the number of issues brought to arbitration, or will changes in the statute have the opposite effect?
- 2) Will the changes improve the relationship between labor and management or will it encourage a new type of divisive game playing?
- 3) Will the criteria mandated by SB750 help tune the negotiation/arbitration process towards labor agreements that are more responsive to public interest?
- 4) Will the statute's focus on economic concerns create problems for negotiations over non-economic matters involving the workplace and

work performance?

- 5) Will the changes make it easier or harder for the mediator to bring about a settlement?
- 6) Will the changes make it easier or harder to select the most qualified, experienced, and unbiased arbitrators?

Although Abernathy and Williams acknowledge that the authors of SB750 believe that Last Best Offer Package arbitration will achieve these results, they remain unconvinced. What they do predict is that both employers and unions will shift to a more conservative end game with a change in perspective from "what can be won in arbitration" to "how to protect and not lose gains achieved previously." They further believe that Oregon will see a number of other consequences develop as well that will ultimately reshape labor agreements and the negotiation process. Some of these predicted consequences are listed below. (Abernathy, Williams 1995)

- 1) Fewer contracts of more than two-year duration.
- 2) More one-year contracts with specified re-openers for the second year.
- 3) The death of win-win bargaining or its use only for non-economic items.
- 4) Experimentation with this new process for the first few years.
- 5) Bargaining teams and agents held more accountable.

Kathryn Whalen, another former attorney for IAFF Local 851 and member of the Oregon State Employee Relations Board (ERB), and Paul Gamson, a labor attorney in Portland, have observed that SB750 seriously undercut "twenty-two years of case law

that laid the foundation for analysis of scope questions leaving no stable structure in which practitioners can take refuge. We can only speculate about how the rebuilding process will occur." (Whalen, Gamson 1995)

Both employers and unions will be operating in an environment that is continually being redefined through arbitrations, ERB rulings, and the development of case law. At the leading edge of defining the legislative intent will be the ERB.

"No one knows for sure how the board (ERB) will interpret and apply the changes." (Whalen, Gamson 1995) What is known is that the ERB applies a three-level analysis to determine legislative intent which includes a look at the "text and context," the history of the legislation, and finally, case law. (Whalen, Gamson 1995)

PROCEDURES

The procedures used in this Applied Research Project began with a review of the post SB750 Oregon Public Employees Collective Bargaining Act (PECBA). The current statute was then compared to the prior statute to determine the specific changes.

Although not cited in this paper, a number of short interviews were conducted with various City of Eugene labor relations managers, IAFF officials, and one labor attorney to insure an adequate understanding of the changes prior to designing the research project.

The next step in the procedure was the literature search which sought to identify information on SB750 and its impacts on Oregon's protective service employers and labor organizations. Some of this material was provided by the professionals who were

interviewed for clarification purposes. Most of this material was prospective and not yet supported by available data at the time it was prepared. This was most likely attributed to the fact that SB750 is rather recent legislation and there are only twenty arbitration cases available for analysis. This relatively small pool of data in which several of the awards were made within a few months of the completion of this project, can be attributed to the lack of external qualified analysis. This lack of available analysis made this project very timely.

The last phase of the Applied Research Project involved acquiring copies of all available post SB750 arbitration awards. These were obtained from the State of Oregon Mediation Office, which is a branch of the Employee Relations Board. The cases were then used to extrapolate data of significance for inclusion in this project. Some of this information was placed into tables for easy interpretation, other aspects were discussed in the “results” and “discussion” sections. This is the element of the ARP that makes this original research.

It should also be noted that although the State Mediators Office was very cooperative in providing the awards, these documents can be difficult to obtain, even though they are a matter of public record. Therefore, credit needs to be given to Helen Towle, Personnel Manager for the City of Eugene Human Resources and Risk Services Department, who acquired this information and subsequently made it available for inclusion in this project.

Finally, two appendices were included at the end of this paper to provide the

reader with access to the relevant portions of the revised statute, and make available summaries of the issues and packages submitted to interest arbitration. The appendices thus include the applicable portion of the statute, and a table of each Last Best Offer Package as presented by the parties in

arbitration. Although inclusion of the individual awards may have proved interesting, it would not have been practical due to the volume of material contained in these arbitration cases.

RESULTS

The results from the research are presented in a format that follows the research questions for easy reference, and continuity of the flow of information and analysis.

Research Question #1: What significant changes has SB750 had on the Oregon Public Employee's Collective Bargaining Act (PECBA) as it pertains to interest arbitration, and what are some of the other forms of interest arbitration as a comparison?

The most significant change to the PECBA promulgated by SB750 was the shift from Conventional Interest Arbitration to Last Best Offer Package. These differences are adequately identified and discussed throughout this paper, and therefore will not be addressed in this section. Instead, the remaining statutory changes to the criteria and the applied balancing test will be examined along with an analysis of the post SB750 arbitration cases.

In the literature review, the statutory criteria that an arbitrator must use in selecting one LBOP was identified. Below, the specific changes to the statute are discussed by criterion comparing the changes in the new statute against the previous one, and then identifying those areas that are most likely to impact the City of Eugene Fire & EMS Department.

- 1) Interest and welfare of the public - Although this criterion was also contained in the previous statute, it was combined with the ability of the employer to pay. Under SB750, ability to pay and interest and welfare have become two separate considerations. The arbitrator still has broad discretion in determining what constitutes "interest and welfare."
- 2) Ability to pay - The one line "ability-to-pay" criterion contained in the old statute was changed to:

A reasonable financial ability of the unit of government to meet the costs of the proposed contract giving due consideration and weight to the other services, provided by, and other priorities of, the unit of government as determined by the governing body. A reasonable operating reserve against future contingencies, which does not include funds in contemplation of settlement of the labor dispute, shall not be considered as available toward a settlement."

[ORS 243.746(4)(b)]

Interest arbitrators must now give consideration to other services provided by the employer. For example, an employer can show that it places a higher priority on one service over another by budget size and the arbitrator must consider this. Another important point was that the old statute did not exclude operating reserves from consideration by an arbitrator as a component of ability to pay. Under SB750, these important operating reserves are now exempt from consideration. Ability to pay, as before, remains a quantifiable determinant. Whether this is an area that will present itself to abuse by employers sheltering financial resources is yet to be determined. For the City of Eugene, its contingency funds and EMS Fund operating reserves should be excluded from consideration.

- 3) Ability of the unit of government to attract and retain qualified personnel at the wage and benefit levels provided: This is a new criterion that places some counter control to the changes in statute related to ability to pay. Specifically, the ability to attract and retain qualified personnel criterion is based on the employer's labor market. On its face, this appears to be a very nebulous criterion that will have to be defined through practice. Although this particular criterion favors unions, in the case of the City of Eugene Fire & EMS Department, the turn-over rate is less than one percent, while the number of applicants per vacant

positions remains high enough to mitigate an argument to increase compensation. (City of Eugene, Personnel Data 1991-1997)

- 4) Overall Compensation: This new criterion compels the interest arbitrator to consider "the overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other paid excused time, pensions, insurance benefits, and all other direct or indirect monetary benefits received." [ORS 243.746(4)(d)] This added criterion requires an arbitrator to consider all costs associated with wages, benefits and incentives, and eliminates discretionary authority from the arbitrator as to whether he or she will consider such costs in measuring placement within the market of comparable communities. This criterion should benefit the City of Eugene which tends to be low in base pay within market, while being high in benefits, incentives, and premium pays, as were bargained by the firefighters. Additionally, the City is one of the few employers within its market that continues to pick-up the 6% employee contribution cost for the Public Employees Retirement System (PERS). This criterion should help insure that proper credit is given by the arbitrator for the different levels of extra pay and benefits Eugene's firefighters receive.

- 5) Comparison of overall compensation with comparable communities:

Comparison with comparable communities is another new criterion under SB750, and found in [ORS 243.746(4)(e)].

Comparison of the overall compensation of other employees performing similar services with the same or other employees in comparable communities. As used in this paragraph, "comparable" is limited to communities of the same or nearest population range within Oregon. Notwithstanding the provisions of this paragraph, the following additional definitions of "comparable" apply to the situations described as follows:

(A) For any city with a population of more than 325,000, "comparable" includes comparison to out-of-state cities of the same or similar size;

(B) For counties with a population of more than 400,000, "comparable" includes comparison to out-of-state counties of the same or similar size; and

(C) For the State of Oregon, "comparable" includes comparison to other states.

This criterion eliminates Oregon's two largest fire service providers, Portland Fire Bureau and Tualatin Valley Fire and Rescue, from being comparable with the City of Eugene. The City of Eugene, which is third in

the state in size but located in a separate geographical-economic region, is considered a separate market. Portland is eliminated from comparison because of its size as a city, and Tualatin because of its size and the fact that it is a special district and not a city. Both of these jurisdictions are situated in a much larger metropolitan area than Eugene and experience a higher cost of living. This criterion should provide significant help in cost containment for Eugene. The previous statute did not exclude Portland from comparison and in fact, Portland was listed in the Contract between the City of Eugene and IAFF Local 851. (Eugene, 1994)

- 6) CPI-All Cities Index (Cost of Living): Although the cost-of-living has historically been considered by interest arbitrators, there are a number of different "Cost Price Indexes" which have been referenced. By stipulating which CPI will be considered by the arbitrator, the confusion experienced in the past should be eliminated. This change should also help in the negotiations process by eliminating any disputes over which index to apply.
- 7) Stipulations of the parties: This criterion existed in the previous statute, and is a carryover that permits both parties to stipulate undisputed evidence going into arbitration.
- 8) Other factors: This final criterion also existed in the old statute in which the arbitrator determined how much weight a given factor received. The

major

difference under SB750 is that it now receives the lowest priority of consideration by an arbitrator.

Although the last criterion, “such other factors,” also existed in the previous statute, the weight applied to it in selecting a package has changed significantly.

Arbitrator Carlton Snow, In The Matter of Interest Arbitration Between Oregon Public Employees Union, Local 503 and The State of Oregon (1996), cited that the Legislature made it clear interest arbitrators shall not use the “such other factors” criterion if the initial seven factors “provide sufficient evidence for an award.” [ORS 743.746] The previous statute placed a much greater emphasis on this criterion and gave arbitrators greater discretion in how to apply it.

Research Question #2: Has SB750 been successful in shifting the advantage back toward employers in Oregon’s interest arbitration process for the protective services?

Since the enactment of SB750, the interest arbitration awards have overwhelmingly favored the employer. With only six of the twenty arbitration awards favoring labor, it appears that the legislation achieved the intended results as established by Senators Derfler and Bryant. Further, after reviewing the actual issues submitted in arbitration, it appears that the LBOPs contain a relatively small number of issues which was also an intended result from the statutory changes made. For more specific detail on the break down of issues contained in the individual packages, refer

to Tables 3 and 4.

On the next page, Table 2 presents a list of the twenty protective services arbitrations which have occurred since the passage of SB750. This table reflects the break down between fire, police, and corrections. For further detail on the individual packages presented to the arbitrators, refer to Appendix B.

Table 2
INTEREST ARBITRATION AWARDS BY CASE
SINCE SB750 ENACTMENT - THROUGH JUNE 1998

NOTE: Employer wins are denoted with a double asterisk following the ERB case number.

| DATE ISSUED | ERB CASE # | PARTIES | ARBITRATOR |
|-------------------------|-------------|--|------------------------|
| 10/95 | IA-07-95** | Winston-Dillard FD #5 /IAFF 2091 | George Lehleitner, Jr. |
| 11/95 | IA-10-95** | Marion County/Marion Co. Law Enforcement Assn | Leslie Sorensen-Jolink |
| 12/95 | IA -01-95** | City of Portland/ Portland Police Commanding Officers Assn | John Hayduke |
| 12/95 | IA-06-95** | Washington County/ Washington Co. Police Officers Assn | Philip Kienast |
| 2/96 | IA-13-95 | State of Oregon/Assn of Corrections Employees | William Bethke |
| 3/96 | IA-28-94** | City of Gresham/ Gresham Police Officers Assn | Katherine Logan |
| 3/96 | IA-11-95** | State of Oregon/OPEU | Carlton Snow |
| 4/96 | IA-21-95 | Marion Co./Marion Co. Law Enforcement Assn | Jack Calhoun |
| 4/96 | IA-09-95** | City of Bend/Bend Firefighters Assn | Carlton Snow |
| 4/96 | IA-18-95** | Deschutes Co./ Deschutes Co. Sheriffs Assn | Howell Lankford |
| 8/96 | IA-22-95** | State of Oregon/ Oregon State Police Officers Assn | William Bethke |
| 2/97 & 9/97 (on remand) | IA-02-96 | City of Springfield/ Springfield Police Assn | Ross Runkel |
| 5/97 | IA-06-96** | Malheur Co./OPEU | Timothy Williams |
| 5/97 | IA-04-96 | Yamhill Co./Teamsters 670 | Howell L. Lankford |
| 6/97 | IA-07-96** | City of Grants Pass/ Grants Pass Police Assn | Katrina I. Boedecker |
| 7/97 | IA-02-97** | City of Lincoln City/ Lincoln City Police Employees Assn | Catherine Harris |
| 2/98 | IA-09-97** | City of Woodburn/ Woodburn Police Assn | Allen M. Hein |
| 3/98 | IA-17-97 | Marion Co. FD #1/ IAFF Local 2557 | George Lehleitner, Jr. |
| 5/98 | IA-16-97** | Clackamas County/ | William H. Dorsey |

| | | | |
|------|----------|---|-----------------|
| | | Clackamas County Peace Officers Assn | |
| 6/98 | IA-07-97 | Klamath County/ Klamath County Peace Officers Association | Herman Torosian |

A break down of the twenty interest arbitration cases by profession reflects that fifteen were police, three fire fighter, and two corrections. Of these twenty cases, employers prevailed in fourteen, and unions in six. It would appear from this data that the changes made to the (PECBA) by SB750 were successful in swinging the pendulum back toward the employer. It is logical to assume that the change in the priority of the statutory criteria has had a significant impact on the package selection process and the resulting interest arbitration awards.

Research Question #3: What effect has SB750 had on the issues brought to interest arbitration?

In further analysis, of the twenty interest arbitration cases submitted since SB750 enactment, the following data was compiled on the issues taken to arbitration and is presented in Table 3.

Table 3
INTEREST ARBITRATION ISSUES: BY METHOD OF SUBMISSION
SINCE SB750 ENACTMENT - THROUGH JUNE 1998

| METHOD OF SUBMISSION | FREQUENCY |
|------------------------------------|-----------|
| Total Number of Issues Submitted | 75 |
| Issues Submitted Jointly | 47 |
| Issues Submitted by a Single Party | 28 |

After reviewing the post SB750 arbitration awards, the major findings were that fourteen were awarded to the employer and only six to unions. Of the twenty cases, there were only seventy-five total issues of which forty-seven were submitted jointly by the two parties, and twenty-eight submitted by a single party (See Table 3). Only fifteen issues were not related to economics, and eighteen of twenty cases included general wages as the main issue (See Table 4).

Table 4

**INTEREST ARBITRATION ISSUES: BY ISSUE / SUBJECT
SINCE SB750 ENACTMENT - THROUGH JUNE 1998**

| ISSUE | FREQUENCY |
|-----------------------------------|-----------|
| General Wage Increases | 18 |
| Special Wage Adjustments: | 17 |
| Overtime | 2 |
| Pay Incentives | 2 |
| Paramedic Premium | 1 |
| Ambulance Premium | 1 |
| Callback Premium | 1 |
| Pilot Premium | 1 |
| Work Out of Class Premium | 2 |
| Bi-lingual Premium | 2 |
| Outpost Premium | 1 |
| Employee Legal Defense Fees | 3 |
| New Job Classification Rate | 1 |
| Insurance Premiums | 10 |
| Retirement Premiums | 6 |
| Contract Duration | 6 |
| Leave Issues: | 9 |
| Paid Leave: Vacation / Holidays | 4 |
| Leaves of Absence | 3 |
| Sick Leave | 2 |
| Layoff / Bumping Rights | 2 |
| Assignments: | 4 |
| Hours of Work, Mandatory Training | 2 |
| Job Bidding | 1 |
| Shift Bidding | 1 |
| Management Rights | 1 |
| Uniform Allowance | 1 |
| Parking | 1 |
| Worker's Compensation | 1 |
| Personnel Records | 1 |

It should be noted that in only two cases no economic issues were submitted in either package. They were: In The Matter of Interest Arbitration Between The State of Oregon and OPEU (1996), which sought to clarify "post bidding," (assignments), and In The Matter of Interest Arbitration Between Marion County Fire District #1 and IAFF Local 2557 (1998), in which both of the packages contained "layoff" language. (See Appendix B: numbers; #7, IA-11-95, and #18, IA-17-97 respectively).

Research Question #4: How are arbitrators applying the statutory criteria, and have any unintended consequences developed?

The problem is that the statute, as modified by SB750, has now raised many questions that will have to be answered by using and refining the process. In reviewing the twenty post SB750 awards however, it was apparent that arbitrators have forged ahead and applied their own interpretation of the new statutory criteria in selecting one final offer package. Below are some examples which are representative of the manner in which the criteria has been applied to various issues.

Although it was difficult to reconcile the speculation presented in the literature review section on unintended consequences of SB750 with the actual arbitration awards, there was some interesting rationale given by arbitrators to support their package selections, and does provide some insight into the process.

Interest and Welfare of the Public:

In The Matter of Interest Arbitration Between International Association of

Firefighters, Local 2557 and Marion County Fire District #1 (1998), Arbitrator George Lehleitner selected the Union's package under the "Interest and Welfare of the Public" criterion because in the matter of "layoff," the Union wanted to bring closure to the issue while the employer's package offered only to "meet" and "discuss" the issue with the Union. Because of this, the arbitrator interpreted that the Union's package better served the "Interest and Welfare of the Public."

Although "interest and welfare of the public" is the first criterion considered when evaluating each LBOP, it is a nebulous criterion at best with no clarification contained within the statute. Additionally, there is little in the way of case law or Employee Relations Board rulings to better define it at this point. Arbitrator Jack Calhoun, In The Matter of Interest Arbitration Between Marion County Law Enforcement Association and Marion County (1996), expresses his frustration over this criterion which is to be given the highest level of consideration. "Like those arbitrators who have issued awards in interest arbitration cases after the law was amended, I find the phrase "interest and welfare of the public" to be imprecise. A review of some of the awards issued prior to passage of SB750 adds little to render the phrase less imprecise or more definitive." (Calhoun 1996)

Ability to Pay:

In The Matter of Interest Arbitration Between the City of Portland and The Portland Commanding Officers Association (1995), Arbitrator John Hayduke awarded

the City of Portland's package based on an overtime issue in which the Union was unable to establish any limits. Although the employer's ability to pay was not originally in question, with no upper limit, the employer's concern of incurring an "unfunded liability" refuted the Association's contention that the City had the "ability to pay" on this economic issue. Therefore, Arbitrator Hayduke determined that the ability to pay criterion was actually a continuum that had limits. Although these limits were not defined in the award package, this relevant fact does seem logical and should serve as a consideration for future case preparation.

Ability to Attract and Retain Qualified Personnel:

The criterion that seems universally moot is the one that most strongly favors unions, "the ability to attract and retain qualified personnel." Without exception, when this criterion was cited by an arbitrator, it was determined, and in most cases conceded by the unions, not to be an issue. More often it appeared as a prospective concern expressed by unions. It seems that the number of qualified applicants continues to exceed the number of available positions in fire fighting, law enforcement, and corrections. Although this is just one consideration in the second balancing test applied by arbitrators, on its face, it would appear to be one of the main criterion favoring labor.

Comparison of Overall Compensation with Comparable

Communities:

The fifth statutory criterion, which addresses comparators for market comparison, seems to have resulted in a significant number of disputes. Arbitrator Allen Hein, In The Matter of Interest Arbitration Between Woodburn Police Association and The City of Woodburn (1998), provides his interpretation of the criterion when the City attempted to narrow its definition of comparable employers.

The criterion expresses a limitation rather than a prescription. That is, it limits consideration to those communities in the same population range but does not require consideration of all cities with that characteristic. Especially considering the statute's direction in criterion (c) to consider recruitment and retention of employees, it seems logical to favor comparisons to those public employers that will be competing with the (employer) for the same employees; in this case, those that are in the same geographic area and that have other similarities, such as being incorporated cities within proximity of the state's major city, Portland.

The fact that arbitrator Hein considers this criterion to include employers within the same labor market, and then ties this to an employer's "ability to retain and attract qualified personnel," provides greater clarification and a significant piece of case history to be referenced in the future.

Arbitrator Catherine Harris, In The Matter of Interest Arbitration Between Lincoln City and Lincoln City Police Employee's Association (1997), interpreted the comparability criterion as follows:

The language of the statute does not provide that similarity of population is the only factor to be determined in determining comparability of communities. To the contrary, once the appropriate range has been identified, nothing precludes the Arbitrator from determining that one or the other of the sets of comparators is more appropriate due to geographical proximity or other factors. In other words, population is only a threshold limitation. If a community is within the population range, other factors may be considered, if not in the appropriate range, then it does not matter how similar geographically or economically the community may be, it is not an appropriate comparator.

On the other hand, Arbitrator Timothy Williams, In The Matter of The Interest Arbitration Between Malheur County, Oregon and Oregon Public Employees Union (1997), used the “other factors” criterion to expand the definition of “comparable communities” beyond “geographical proximity.” By considering both criteria in conjunction, Williams was able to consider other employers as comparable who did not meet the size definition for market comparability contained within the fifth criterion.

The Malheur County case is also a good indicator of the changes in awards between “Last Best Offer Package” arbitration and conventional interest arbitration. In his analysis, Arbitrator Williams agreed with the Union’s issue on wage “catch-up,” in the first year, and determined that the County had the resources to cover the costs. On the other hand, the Union’s package was not selected because it proposed a three year

duration and the County was able to show projected deficits in year three that would cause a reduction in patrol force. Based on the first statutory criterion, “interest and welfare of the public,” Williams selected the employer’s package. If this case had been considered under the terms of conventional or even issue-by-issue arbitration, the Union probably would have been awarded their proposal on first year wages.

The results of the post SB750 arbitration awards are already being cited in subsequent arbitration awards, and precedent is being established. Although the comparability criterion is somewhat nebulous in the statute, arbitrators are doing what they do best, making decisions on the best information available. Within a relatively short period of time practitioners for both employers and unions will be able to reference an adequate volume of awards which better define the statutory criteria. This reference base should help both sides build better cases in the future.

DISCUSSION

There are a variety of perspectives on SB750, its impact, and the strategies that should be practiced in the “Last Best Offer Arbitration” process. In fact, there seems to be a general lack of consensus as to whether the Public Employees Collective Bargaining Act needed any modifications at all. Although Oregon Senator Randy Leonard argues that SB750 made changes to a system that wasn't broken, veteran negotiator Lon Mills contends that SB750 did not go far enough to reform the Oregon's collective bargaining system. (Leonard 1995) (Mills 1995)

While it is still too soon to fully understand the impacts of the statutory changes, the twenty interest arbitration awards rendered to date reflect some interesting trends.

First and foremost, employers seem to have been given a significant edge under the new system. No longer are packages split, modified, or awarded on an issue by issue basis. Further, as illustrated in Tables 3 and 4, the issues brought forward to arbitration by both employers and unions represent a relatively short list. Additionally, these issues seem primarily limited to economic concerns which seems to be the best strategy.

Arbitrator William Bethke, In *The Matter Between The Oregon State Police Officers Association and The State of Oregon* (1996), states in his conclusions that, “though the arbitrator finds flaws in the State’s proposal, and virtues in the Association’s, under the statute he must approve one proposal or the other. On balance, and not without reluctance, that proposal is the State’s.” Although arbitrators show some difficulty in modifying their perspectives to follow the new statute, they seem to be making the adjustment. Additionally, the employer’s package has been selected most frequently now that the arbitrators can no longer “split the baby.”

Abernathy and Williams predicted in 1995 that both employers and unions would modify their strategy to include a more conservative end game with a shift in perspective from, "what can be won in arbitration" to "how to protect and not lose gains achieved previously." (Abernathy, Williams 1995) This seems to have been the case in

that the packages are relatively narrow in scope, and for the most part reasonably close to one another.

Limiting the number of issues taken to arbitration has become a strategic concern in the post SB750 environment. Arbitrator George Lehleitner, In The Matter of Arbitration Between International Association of Firefighters, Local 2091 v. Winston-Dillard Fire District Number #5 (1995), discusses the importance of limiting issues, and the fact that both parties in this case significantly narrowed their issues to the point where the arbitrator had two clean packages to assess. By limiting the number of issues carried forward, and narrowing the cost of the package, there are fewer areas in dispute, and less risk for both parties. Arbitrators John Abernathy and Tim Williams agree with this strategy and also contend that the fewer issues placed into the LBOP the better.

Carlton Snow, Arbitrator In the Matter of Interest Arbitration between Bend Firefighters and the City of Bend, Oregon (1995) states that “in theory, last best offer arbitration should discourage parties from adopting extreme positions. The statute is designed to encourage decision-making by the parties within the context of a negotiated settlement.” (Snow 1996) This citation from Arbitrator Snow is another example which supports the perspective that arbitrators will view the revised process in this manner.

Probably the single most unanticipated problem with the revised statutory criteria, is the definition of the first criterion, “interest and welfare of the public.” In

reviewing the post SB750 arbitration awards, it is clear that there is some frustration regarding its application, and true definition. Arbitrator Howell Lankford, In The Matter of The Interest Arbitration Between The Deschutes County Sheriffs Association and Deschutes County (1996), has applied this criterion in an interesting manner. In Howell's opinion, "the interest and welfare of the public can hardly be discussed at all except in terms of the factors listed in [ORS 243.746(4)(b)-(f)]. It is hard to imagine what an argument about the interest and welfare of the public would look like in the context of a dispute over employee compensation without any reference to the factors which the legislature specifies are to be given secondary priority." (Lankford 1996)

Although the legislature's intent was to leave some discretion with the arbitrator in the application of this criterion, in practice, it appears to have become the most difficult yet most important criterion used in LBOP selection. Arbitrator Lankford goes on to comment that "ability to pay, recruitment and retention, overall compensation, comparability, and the CPI are all criteria which point to hard data." (Lankford 1996)

It seems that although weight and consideration were given to the "interest and welfare to the public" criterion, most awards hinged on the secondary group of criteria which are much more tangible.

The problem with SB750 and this shift in paradigm is that the system loses twenty-two years of practice, precedent, and refinement. This fact was emphasized by current Employee Relations Board member, Kathryn Whalen, and labor attorney Paul

Gamson who contend that the past history and experience with the PECBA, "laid the foundation for analysis of scope questions leaving no stable structure in which practitioners can take refuge. We can only speculate about how the rebuilding process will occur." (Whalen, Gamson 1995)

Although this outcome may or may not have been anticipated, there is no evidence in the literature to suggest that an explicit intent of the Derfler-Bryant Act was to de-stabilize the collective bargaining process in the State of Oregon. From this perspective, both employers and unions will be operating in an environment that is continually being refined through arbitrations, ERB rulings, and case law. At the leading edge of defining the Act will be various arbitrators and the ERB. It will be their task to determine the legislative intent of the changes, and apply the three level balancing test in those areas that are challenged by either employers or unions.

RECOMMENDATION

The statutory changes resulting from SB750 have radically effected change in the collective bargaining process for Oregon's protective services. The change from conventional arbitration to Last Best Offer Package arbitration, has in effect eliminated twenty-two years of public employee collective bargaining history that has been refined by practice, arbitration awards, and litigation. Practitioners therefore need to adapt to and manage this change through their approach to collective bargaining, and interest arbitration.

When comparing the post SB750 arbitration awards, it is clear that the

prevailing party frequently brought forward fewer issues, or presented a more moderate package. Based on these findings, it is recommended that the issues included in the LBOP should be limited to economic issues, and reduced to as few as possible, around three. Each additional issue added to a party's LBOP, increases the risk of losing the entire arbitration.

It is also recommended that issues in the package be tied to the statutory criteria which are weighed in a three level balancing test. As previously discussed, the "interest and welfare of the public," is the number one criterion an arbitrator must consider in selecting one LBOP. This criterion is not only based on ability to pay, but other considerations that can be tied to interest and welfare. The concern is that there can be any number of compelling arguments used to justify this criterion as supporting a particular position.

The data from the twenty post SB750 arbitration awards reveal that the employers have been favored in the decisions. Of the twenty cases, fourteen were awarded to the employer, while unions prevailed in only six. Collectively only seventy-five issues total have been brought forward to arbitration. Of these twenty issues, only fifteen were not related to economics, and eighteen of these twenty cases included general wages as the main issue. It should again be noted that only two cases did not have any economic issues in either package, they were: the State of Oregon and OPEU (OSCI Security Staff) (1995), which sought to clarify "post (assignment) bidding," and Marion County Fire District #1 vs. IAFF Local 2557 (1997), which arbitrated "layoff."

Finally, a number of the awards themselves cite the importance of jointly establishing comparable jurisdictions. Without an appropriate labor market being established, economic issues will be difficult to resolve in the negotiation process.

The primary recommendations arising from this research are to attempt resolution of as many issues as possible in the bargaining process. This concept along with reducing the cost to the public was at the heart of the Derfler-Bryant Act's development. If on the other hand, resolution is impossible and arbitration inevitable, the number of issues included in either parties' LBOP should be limited to about three with an emphasis placed on issues of economic concern. The rationale being that an arbitrator in applying the statutory criteria and weighing its elements, will place a cost on all issues. Therefore, it is important to limit those issues carried forward to arbitration as the most important concerns of each party.

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In The Matter of The Interest Arbitration Between The Klamath County v. Klamath County Peace Officers Association, Arbitrator - Heman Torosian, ERB Case # IA-07-97, (6/15/98).

APPENDIX A
ORS 743.742-762

APPENDIX A

243.742

PUBLIC OFFICERS AND EMPLOYEES

(Arbitration)

243.742 Binding arbitration when strike prohibited. (1) It is the public policy of the State of Oregon that where the right of employees to strike is by law prohibited, it is requisite to the high morale of such employees and the efficient operation of such departments to afford an alternate, expeditious, effective and binding procedure for the resolution of labor disputes and to that end the provisions of ORS 240.060, 240.065, 240.080, 240.123, 243.650 to 243.783, 292.055 and 341.290, providing for compulsory arbitration, shall be liberally construed.

(2) When the procedures set forth in ORS 243.712 and 243.722, relating to mediation of a labor dispute, have not culminated in a signed agreement between the parties who are prohibited from striking, the public employer and exclusive representative of its employees shall include with the final offer filed with the mediator a petition to the Employment Relations Board in writing which initiates binding arbitration for bargaining units with employees referred to in ORS 243.736 (1). Arbitration shall be scheduled by mutual agreement not earlier than 30 days following the submission of the final offer packages to the mediator. Arbitration shall be scheduled in accordance with the

procedures in ORS 243.746. [1973 c.536 {18, 1995 c.286 {9}]

243.745 [1969 c.671 {6; repealed by 1973 c.536 {39}]

243.746 Selection of arbitrator; arbitration procedure; last best offers; basis for findings and opinions; sharing arbitration costs. (1) In carrying out the arbitration procedures authorized in ORS 243.712 (2)(d), 243.726(3)(c) and 243.742 the public employer and the exclusive representative may select their own arbitrator.

(2) Where the parties have not selected their own arbitrator within five days after notification by the Employment Relations Board that arbitration is to be initiated, the board shall submit to the parties a list of seven qualified, disinterested, unbiased persons. A list of Oregon interest arbitrations and fact-findings for which each person has issued an award shall be included. Each party shall alternately strike three names from the list. The order of striking shall be determined by lot. The remaining individual shall be designated the "arbitrator":

(a) When the parties have not designated the arbitrator and notified the board of their choice within five days after receipt of the list, the board shall appoint the arbitrator from the list. However, if one of the parties strikes the

names as prescribed in this subsection and the other party fails to do so, the board shall appoint the arbitrator only from the names remaining on the list.

(b) The concerns regarding the bias and qualifications of the person designated by lot or by appointment may

(3) The arbitrator shall establish dates and places of hearings. Upon request of either party or the arbitrator, the board shall issue subpoenas. Not less than 14 calendar days prior to the date of the hearing, each party shall submit to the other party written last best offer package on all unresolved mandatory subjects, and neither party may change the last best offer package unless pursuant to stipulation of the parties or as otherwise provided in this subsection. The date set for the hearing may thereafter be changed only for compelling reasons or by mutual consent of the parties. If either party provides notice of a change in its position within 24 hours of the 14-day deadline, the other party will be allowed an additional 24 hours to modify its position. The arbitrator may administer oaths and shall afford all parties full opportunity to examine and cross-examine all witnesses and to present any evidence pertinent to the dispute.

(4) Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, unresolved mandatory subjects submitted to the

be challenged by a petition filed directly with the board. A hearing shall be held by the board within 10 days of filing of the petition and the board shall issue a final and binding decision regarding the person's neutrality within 10 days of the hearing.

arbitrator in the parties' last best offer packages shall be decided by the arbitrator. Arbitrators shall base their findings and opinions on these criteria giving first priority to paragraph (a) of this subsection and secondary priority to subsections (b) to (h) of this subsection as follows:

(a) The interest and welfare of the public.

(b) The reasonable financial ability of the unit of government to meet the costs of the proposed contract giving due consideration and weight to the other services, provided by, and other priorities of, the unit of government as determined by the governing body. A reasonable operating reserve against future contingencies, which does not include funds in contemplation of settlement of the labor dispute, shall not be considered as available toward a settlement.

(c) The ability of the unit of government to attract and retain qualified personnel at the wage and benefit levels provided.

(d) The overall compensation presently received by the employees, including direct wage compensation,

vacations, holidays and other paid excused time, pensions, insurance, benefits, and all other direct or indirect monetary benefits received.

(e) Comparison of the overall compensation of other employees performing similar services with the same or other employees in comparable communities. As used in this paragraph, "comparable" is limited to communities of the same or nearest population range within Oregon. Notwithstanding the provisions of this paragraph, the following additional definitions of "comparable" apply in the situations described as follows:

(g) The stipulations of the parties.

(h) Such other factors, consistent with paragraphs (a) to (g) of this subsection as are traditionally taken into consideration in the determination of wages, hours, and other terms and conditions of employment. However, the arbitrator shall not use such other factors, if in the judgment of the arbitrator, the factors in paragraphs (a) to (g) of this subsection provide sufficient evidence for an award.

(5) Not more than 30 days after the conclusion of the hearings or such further additional periods to which the parties may agree, the arbitrator shall select only one of the last best offer packages submitted by the parties and shall promulgate written findings along with an opinion and order. The opinion and order shall be served on the parties

(A) For any city with a population of more than 325,000, "comparable" includes comparison to out-of-state cities of the same or similar size;

(B) For counties with a population of more than 400,000, "comparable" includes comparison to out-of-state counties of the same or similar size; and

(C) For the State of Oregon, "comparable" includes comparison to other states.

(f) The CPI-All Cities Index, commonly known as the cost of living.

and the board. Service may be personal or by registered or certified mail. The findings, opinions and order shall be based on the criteria prescribed in subsection (4) of this section.

(6) The cost of arbitration shall be borne equally by the parties involved in the dispute. [1973 c.536 {19; 1995 c.286 {10}]

243.750 [1963 c.579 {5; repealed by 1969 c.671 {3 (243.751 enacted in lieu of 243.750)}]

243.751 [1969 c.671 {4 (enacted in lieu of 243.750); repealed by 1973 c.536 {39}]

243.752 Arbitration decision final; enforcement; effective date of compensation increases; modifying award. (1) A majority decision of the arbitration panel, under ORS 243.706 and 243.726 and 243.746 to 243.746, if supported by competent, material and substantial evidence on the whole record, based upon the factors set forth in ORS 243.746

(4), shall be final and binding upon the parties. Refusal or failure to comply with any provision of a final and binding arbitration award is an unfair labor practice. Any order issued by the Employment Relations Board pursuant to this section may be enforced at the insistence of either party or the board in the circuit court for the county in which the dispute arose.

(2) The arbitration panel may award increases retroactively to the first day after the expiration of the immediately preceding collective bargaining agreement. At any time the parties, by stipulation, may amend or modify an award of arbitration. [1973 c.536 {21; 1995 c.286 {11]

243.760 [1963 c.579 {6; repealed by 1973 c.536 {39]

**243.762 Alternative
arbitration procedure under
collective bargaining agreement.**

Nothing in ORS 240.060, 240.065, 240.080, 240.123, 243.650 to 243.782, 292.055 and 341.290 is intended to prohibit a public employer and the exclusive representative of its employees from entering into a collective bargaining agreement which provides for a compulsory arbitration procedure which is substantially equivalent to ORS 243.742 to 243.756. [1973 c.536 {22]

APPENDIX B

POST SB750 INTEREST ARBITRATION PACKAGES

APPENDIX B
POST SB750 INTEREST ARBITRATION PACKAGES

- 1) **ARBITRATION:** Winston Dillard Fire District #5 / IAFF Local 2091
ERB CASE #: IA-07-95
ARBITRATOR: George Lehleitner
DISPOSITION: Employer Package
DATE: October 1995

| EMPLOYER | UNION |
|---|--|
| Representative: George Lehleitner | Representative: Michael J. Tedesco |
| <p>Medical Insurance: Employer contribution up to \$450 per month for medical insurance benefits.</p> <p>Compensation: Maintain current differential in the wage scale/structure. 7/1/95 - 2.16% 7/1/96 - 3.5% 7/1/97 - 3.5%</p> <p>Fire Medic Pay: EMT-I certification pay of \$105 per month. 7/1/95, EMT-P certification pay of \$200 per month.</p> | <p>Medical Insurance: 7/1/95, employer shall pay 95% of the premiums for group health insurance covering employees and families. The insurance carrier shall be mutually agreed upon by the employer and union.</p> <p>Compensation: 7/1/95 - Salary steps increase by \$50 7/1/96 - 3.5% 7/1/97 - 6%</p> <p>Fire Medic Pay: EMT-I certification premium of 5% of Engineer rate. EMT-P certification premium of 7.5%</p> |

- 2) **ARBITRATION:** Marion County / Marion County Law Enforcement Association

ERB CASE #: IA-10-95
ARBITRATOR: Leslie Sorensen-Jolink
DISPOSITION: Employer Package
DATE: November 1995

| EMPLOYER | UNION |
|--|--|
| Representative: Roy Flint | Representative: John Hoag |
| <p>Compensation: 7/1/95 - Total increase in wage and benefit costs equal to 2.9% Total Personnel Costs (TPC) for the fiscal year. The 2.9% is a gross lump sum of \$749 (based on average salary) and the respective merit (step) increases, insurance premiums and other related payroll costs.</p> <p>7/1/96 - Wage and benefit adjustment as follows: Minimum of 2% TPC and a maximum of 5% TPC: the Portland CPI (W) shall establish the employer's TPC from which shall be deducted the respective merit (step) increases, insurance premium and other related payroll costs. The remaining monies shall establish the cost of living adjustment (COLA) for the fiscal year, e.g., CPI = 3% = TPC 3%, Payroll Costs -1%, COLA 2%</p> | <p>Compensation: 7/1/95 - 4% wage increase for all classifications and steps.</p> <p>7/1/96 - wages and benefits for all classifications and steps shall be increased by an amount not less than the increase in the consumer price index, US CPI-W, between 5/95 and 5/96 with a minimum of 3% and a maximum of 6%, plus an increase of 1% in addition to the CPI increase. However, the total increase shall not exceed 6%.</p> <p><u>Add Bilingual Premium Pay:</u> Employees bilingual in Spanish or any other language utilized in the course of dealing with the public, including inmates, to the extent that the employee can effectively communicate in that language, will receive 2.5% premium of the employee's base wage.</p> |

- 3) **ARBITRATION:** City of Portland / Portland Police Commanding Officers
ERB CASE #: IA-01-95
ARBITRATOR: John Hayduke
DISPOSITION: Employer Package

DATE: December 1995

| EMPLOYER | UNION |
|---|---|
| Representative: Liana Columbo | Representative: Henry J. Kaplan |
| Compensation: Both parties proposed across-the-board wage increases of 3.6% effective, 7/1/94, and 2.9% effective, 7/1/95, (percentages derived from 100% of CPI) | |
| <p>Duration: Two-year contract.</p> <p>Overtime: Continue the exemption of PPCOA bargaining unit members from overtime.</p> <p>Legal Fees: Status quo.</p> <p>Management Rights - Take-Home Cars: Add language to the management rights clause to provide that the assignment of City take-home cars is a management right. (Take-home vehicles are now provided to command officers under a system governed by labor contract, general order and bureau policies & practices.)</p> | <p>Duration: Three-year contract; re-opener on wages and benefits in the third year.</p> <p>Overtime: Pay PPCOA bargaining unit members overtime after eight hours work in a day and after forty hours in a week.</p> <p>Legal Fees: Bargaining unit members be reimbursed for reasonable attorney's fees incurred in defense of the member in a criminal investigation or against criminal charges arising from the member's actions as a police officer, so long as no criminal conviction or disciplinary action results from the investigation or the charges.</p> <p>Management Rights - Take-Home Cars: Status quo.</p> |

- 4) **ARBITRATION:** Washington County / Washington County Police Officers
ERB CASE #: IA-06-95
ARBITRATOR: Philip Kienast
DISPOSITION: Employer Package
DATE: December 1995

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| EMPLOYER | UNION |
|--|---|
| Representative: Jim Korshoj, Kenneth Bemis | Representative: Jaime B. Goldberg |
| <p>Retirement: Maintain current language with regard to PERS pick-up.</p> <p>Medical Insurance: Effective the first calendar month following ratification of this agreement, or as soon thereafter as is administratively feasible, the County shall discontinue its PPO and its fee for service health insurance plans and instead shall make available during the remaining term of this agreement the Good Health Plan Choice Option and the Kaiser HMO health plans (or plans of other carriers providing reasonably comparable overall levels of benefits). Each bargaining unit employee shall choose coverage by one of these plans. The County shall pay up to the full premium costs of the Good Health Plan Choice Option or its equivalent for each eligible employee and his/her dependents, but the employee must pay the difference, if any, between the monthly premium cost of the Good Health Plan Choice Option or its equivalent and the Kaiser plan if the employee selects the Kaiser plan.</p> | <p>Retirement: The County will continue to "pick-up" the employee contribution to the PERS Fund for the employee members participating in PERS. If the Oregon Supreme Court declares that Ballot Measure 8 is valid, then effective the date of that decision, the County "pick-up" shall cease, unless an employee voluntarily makes a six percent (6%) payroll deduction to a deferred compensation program, in which case the County's "pick-up" shall continue. If such actions would be inconsistent with the Supreme Court decision, the parties will reopen this section of the contract if permitted by the Supreme Court decision.</p> <p>Medical Insurance: Status quo.</p> |

5) ARBITRATION: State of Oregon / Association of Oregon Corrections Employees

ERB CASE #: IA-13-95

ARBITRATOR: William P. Bethke

DISPOSITION: Union Package

DATE: February 1996

| EMPLOYER | UNION |
|--|--|
| Representative: Gary M. Cordy | Representative: John Hoag |
| Ballot Measure 8: Both parties propose salary increases which will hold non-security employees harmless if Ballot Measure 8 is held valid. NOTE: BM8 requires all public employees to pay the 6% cost of PERS (retirement system). | |
| <p>Compensation: 7/1/95 - 5% for security employees. Wage freeze for non-security employees.</p> <p>7/1/96 - COLA of 2% - 4% based on CPI</p> <p><u>Incentive Pay:</u> Eliminate existing incentive pay for the Tactical Emergency Response Team. Provide slightly higher incentive pay for employees who receive intermediate or advanced BPSST certification than the amounts specified by the Union. The State attaches requirements of seniority, annual uncompensated "education, training, or service," and passing a physical in order to qualify for this incentive pay.</p> <p>Criminal Defense: Status quo.</p> | <p>Compensation: 7/1/95 - 5%</p> <p>7/1/95 - COLA capped at 5% and a 2% increase for all bargaining unit employees.</p> <p><u>Incentive Pay:</u> Maintains and redefines a separate incentive pay category for employees who participate in the TERT. Proposal does not include the qualifying criteria proposed by the State for intermediate or advanced BPSST Certification Incentive pay.</p> <p>Criminal Defense: Defense costs reimbursed when a prosecution for conduct as employees was not justified. The State would reimburse employees who were acquitted and were not terminated for misconduct.</p> |

- 6) **ARBITRATION:** City of Gresham / Gresham Police Officers Association
ERB CASE #: IA-28-94
ARBITRATOR: Katherine Logan
DISPOSITION: Employer Package
DATE: March 1996

NOTE: Unable to obtain copy of award, however, obtained information from ERB on salient issues which were included in Table 4, "Interest Arbitration Issues," and discussed in the text.

- 7) **ARBITRATION:** State of Oregon / OPEU (OSCI Security Staff)
ERB CASE #: IA-11-95
ARBITRATOR: Carlton J. Snow
DISPOSITION: Employer Package
DATE: March 1996

| EMPLOYER | UNION |
|--|------------------------------------|
| Representative: Peter DeLuca | Representative: Tim Nesbitt |
| Post Bidding: The employer assigns workers to job posts and employees bid only for shifts and days off. | Post Bidding: Status quo. |

8) ARBITRATION: Marion County / Marion County Law Enforcement Association

ERB CASE #: IA-21-95

ARBITRATOR: Jack H. Calhoun

DISPOSITION: Union Package

DATE: April 1996

| EMPLOYER | UNION |
|--|---|
| Representative: Roy Flint | Representative: John Hoag |
| <p>Compensation: Salary for new position of Court Security Officer shall be at range 16D, a lower wage scale, comparable to a Deputy Sheriff Trainee and Corrections Officer Trainee.</p> <p>Layoff: Establish a separate and distinct classification of Court Security Officer: Contract Article 29, Section 5. All Court Security Officer positions shall be considered as one job classification.</p> | <p>Compensation: Salary for new position of Court Security Officer shall be paid at the Deputy Sheriff wage scale. Court Security Officers shall be eligible for all benefits provided in this contract for Deputy Sheriffs.</p> <p>Layoff: All Deputy Sheriff positions shall be considered as one job classification. This includes but is not limited to Deputy Sheriff Trainee Basic, Deputy Sheriff Intermediate, Deputy Sheriff Advanced, Court Service Transport Officer Basic, Court Service Officer Intermediate, Court Service Transport Officer Advanced, Court Security Officer Advanced, Deputy Sheriff Basic, Deputy Sheriff Intermediate, and Deputy Sheriff Advanced.</p> |

- 9) **ARBITRATION:** City of Bend / Bend Firefighter's Association
ERB CASE #: IA-09-95
ARBITRATOR: Carlton J. Snow
DISPOSITION: Employer Package
DATE: April 1996

| EMPLOYER | UNION |
|---|--|
| Representative: Bruce Bischof | Representative: Rhonda Fenrich |
| Compensation: 7/1/95 - 2.8% 1/1/96 - 2% 7/1/96 - COLA, 3%-5.25% based on US CPI-W from 5/95-5/96 <u>Ambulance Pay:</u> Base salaries increase to 2.4% to reflect a distribution of funds previously used for "First Run Ambulance pay." Retirement: PERS Plan. Effective 7/1/95, employees contribute 6%. If Measure 8 is invalidated, the city will resume the pick-up. | Compensation: 7/1/95 - 2.8% 1/1/96 - 4% 7/1/96 - COLA, 3.5%-5.25% based on US CPI-W <u>Ambulance Pay:</u> Base salaries will be increased 2.9% and "First Run Ambulance pay" will be discontinued. Retirement: Same as management proposal except adds: The City will reimburse employees for all monies withheld since 7/1/95. |

- 10) **ARBITRATION:** Deschutes County / Deschutes County Sheriff Association
ERB CASE #: IA-18-95

ARBITRATOR: Howell L. Lankford
DISPOSITION: Employer Package
DATE: April 1996

| EMPLOYER | UNION |
|--|--|
| Representative: Bruce Bischof | Representative: Rhonda Fenrich |
| Hours of Work: Parties reached agreement at hearing. | |
| Working out of Classification: Parties reached agreement at hearing. | |
| <p>Compensation: 7/1/95 - 3.2% 7/1/96 - CPI All Cities (min. 2.5% - max. 4.5%) 7/1/97 - CPI All Cities (min. 2.5% - max. 4.5%)</p> <p>(NOTE: percentages/increases also apply to cert. pay, clothing allowance, longevity.)</p> <p><u>Incentive Pay:</u> Status quo.</p> | <p>Compensation: 7/1/95 - 5% 7/1/96 - 4% 1/1/97 - 1% 7/1/97 - 4% 7/1/98 - 2%</p> <p><u>Incentive Pay:</u> Intermediate Cert. incentive pay increases from 2.5% to 5% (also requires seven years continuous full-time service with the Sheriffs Department)</p> |
| <p>Leave of Absence With Pay: Status quo.</p> | <p>Leave of Absence With Pay: A full-time employee who has been continuously employed by the county for a period of six months shall be entitled to leave with pay for a period not exceeding fifteen days in any one calendar year for a period of annual active duty for training as a member of the National Guard, National Guard Reserve, or any reserve component of the Armed Forces for the United States, or the United States Public Health Service, provided the employee has made written application therefore. Military leave with pay may only be granted when the employee receives bona fide military orders to active duty for a temporary period of time. Each employee shall provide his or her schedule to the</p> |

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| | Department every three months. |
| Retirement: Employees will contribute to PERS in accordance with state law. | Retirement: Continue to provide 6% PERS employee pick-up. Effective 7/1/95, employees shall contribute 6% to PERS. If Measure 8 is determined to be invalid, the County will resume the 6% pick-up and will reimburse employees for all monies withheld since 7/1/95. |
| Insurance: 7/1/95 - Fully paid by County 7/1/96 - Fully paid by County 7/1/97 - Health insurance benefits will be fully paid by the County; however, if the premium increases over 5% the amount over will be split 50/50 between the employee and the County. | Insurance: 7/1/95 - Fully paid by County 7/1/96 - Fully paid by County 7/1/97 - Fully paid by County, except the County may choose to reopen on insurance in the third year and the Association may choose to reopen on wages. The County agrees to maintain benefit levels that are equal to or better than current benefit levels. The County shall make contributions to retiree medical insurance in accordance with County rules for similar payments made to other County employees. These payments shall be made to all employees who retire or have retired as of, 1/1/94. |
| Selective Salary Adjustments: Status quo. | Selective Salary Adjustments: Animal Ordinance Technician Civil Technician Office Assistant |
| Duration: Modify to provide for three year agreement from 7/1/95-6/30/98. | Duration: This Agreement shall be effective from 7/1/95 through 6/30/98. After 6/30/98, this Agreement shall be automatically reviewed from year to year, unless either the County or the Association gives written notice to the other not later than November 1, prior to the expiration |

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| | <p>date of this Agreement of its desire to modify the Agreement.</p> <p>The Agreement will remain in force and effect during all periods of negotiations.</p> |
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11) ARBITRATION: State of Oregon / Oregon State Police Officers Association

ERB CASE #: IA-22-95

ARBITRATOR: William Bethke

DISPOSITION: Employer Package

DATE: August 1996

| EMPLOYER | UNION |
|--|---|
| Representative: Gary M. Cordy | Representative: Daryl S. Garretson |
| <p>Compensation: Two year freeze</p> <p><u>Selective Salary Adjustments for Telecommunication I and II:</u> Two-year freeze</p> <p><u>Outpost Itinerary (scheduling and premium pay):</u> Eliminate the "outpost itinerary" provision.</p> <p>NOTE: The current provision provides for flexible scheduling and premium pay of troopers assigned to "outposts."</p> <p>Insurance: Freeze on level of contributions with any increases to be paid by employees.</p> <p>Uniform Allowance: The State would not restrict the current allowance, but would require prior approval of purchases</p> | <p>Compensation: 3% each year for two years.</p> <p><u>Selective Salary Adjustments for Telecommunication I and II:</u> Two additional 2% raises.</p> <p><u>Outpost Itinerary (scheduling and premium pay):</u> Status quo.</p> <p>Insurance: Status quo.</p> <p>Uniform Allowance: Expand the allowance for certain footwear.</p> <p>Parking Reimbursement: Reimbursement for parking for employees at the Portland Crime Lab. Change in methodology in premium pay for pilots.</p> <p>Compensatory Time: Amend</p> |

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| and insist that purchases be appropriate for the employee's work. | language on compensatory time to conform to its view of the requirements of the Fair Labor and Standards Act and the situation before the last interest arbitration. |
| Parking Reimbursement: Status quo. | |
| Compensatory Time: Status quo. | |

12) ARBITRATION: City of Springfield / Springfield Police Association
ERB CASE #: IA-02-96
ARBITRATOR: Ross R Runkel
DISPOSITION: Union Package
DATE: September 1997

| EMPLOYER | UNION |
|---|--|
| Representative: Gary Bullard & Kenneth E. Bemis | Representative: John Hoag |
| <p>Compensation: 7/1/96 - 2.7% 7/1/97 - 2%-5% (Based on U.S. CPI-W, May to May) 7/1/98 - 3%-5% (Based on U.S. CPI-W, May to May)</p> <p>Insurance: The City shall provide and pay the cost of the current health and dental plans, not to exceed \$390.00. Increase in premiums which exceed this cap shall be shared equally by the City and the employees covered by this agreement.</p> <p>Duration: 7/1/96 through 6/30/99. Negotiations for the successor agreement shall commence on or before 9/1/98.</p> <p>Personnel Records: Status quo.</p> | <p>Compensation: 7/1/96 - 2.7% 7/1/97 - 2%-5% (Based on U.S. CPI-W, May to May) 7/1/98 - 2%-5% (Minus 1% from actual U.S. CPI-W, May to May 1998) However, if the CPI exceeds 6% in either of these two years, the Union may reopen negotiations for that year on wages.</p> <p>Insurance: Retroactive to 7/1/96 the City shall provide and pay the full cost of the current health and dental plans or substantially comparable plans during the life of this agreement.</p> <p>Duration: 7/1/96 through 6/30/99</p> <p>Personnel Records: Written reprimand/ warnings shall be deemed to be stale in an employee's personnel file</p> |

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| | after two years so long as no other disciplinary action occurs within that time period. A document that is stale cannot be used for purposes of progressive discipline. In addition, employees shall have the right to submit rebuttal material to any critical material contained in their personnel file. |
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| <p>Retirement: Effective 7/1/97, each employee in the bargaining unit who is an active participant in the Pacific Mutual Retirement Plan shall contribute 2% of employee salary to the Plan, which contribution shall be withheld from the salary of the employee.</p> <p>Effective 7/1/98, each employee in the bargaining unit who is an active participant in the Pacific Mutual Retirement Plan shall contribute 4% of salary to the Plan, which contribution shall be withheld from the salary of the employee.</p> <p>The City will not be required to fund the current interest earnings on an annual basis, but will remain obligated for the equivalent of such earnings at the time an employee retires or is otherwise eligible for distribution of contributions and earnings. The parties agree that the determination of the investment portfolio for contributions and earning of the Plan are within the discretion of the City. Changes or modifications to the investment portfolio or investment strategies of the Plan do not constitute changes to the Plan's structure as otherwise proscribed in the Article, and remain</p> | <p>Retirement: Status quo, employer continues pick-up.</p> <p>NOTE: ERB ordered the Union to withdraw the following "permissive" proposal;</p> <p>Any disputes concerning an employee or former employee over the employee's eligibility for any benefit under the retirement plan or any other benefit for which the employee or former employee may be eligible may be processed on their behalf by the Association through the grievance procedure.</p> |
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| within the sole discretion of the Plan's trustees. | |
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13) ARBITRATION: Malheur County / OPEU
ERB CASE #: IA-06-96
ARBITRATOR: Timothy D.W. Williams
DISPOSITION: Employer Package
DATE: May 1997

| EMPLOYER | UNION |
|---|---|
| Representative: Michael Snyder | Representative: Roger Bouch |
| Compensation: 7/1/96 - 2.7% 7/1/97 - 3% 7/1/98 - 3% | Compensation: 7/1/96 - 6% 7/1/97 - 6% 7/1/98 - 6% |

14) ARBITRATION: Yamhill County / Teamsters 670
ERB CASE #: IA-04-96
ARBITRATOR: Howell L. Lankford
DISPOSITION: Union Package
DATE: May 1997

| EMPLOYER | UNION |
|---|---|
| Representative: John M. Junkin | Representative: John S. Bishop |
| Compensation: 7/1/96 - 2.9% 7/1/97 - 2%-5% (based on Portland CPI-U) Incentive Pay: Bi-lingual premium pay of 1.5% for all employees. 3% for Intermediate BPSST certification, or for equivalent education for non-sworn employees 4% for advanced BPSST certification or for equivalent education for non-sworn employees with the intermediate and advanced premium not being cumulative. | Compensation: 7/1/96 - 3% 1/1/97 - 3% 7/1/97 - 3% 1/1/98 - 3% Incentive Pay: 3% for Intermediate BPSST certification, 4% for advanced. An additional 3% for an AA/AS degree and 4% for a BA/BS degree with a maximum total incentive cap of 6% for education/certification. 1.5% premium pay for bi-lingual ability (English/Spanish). |
| Both parties propose to delete the probationary salary step and add an additional step at the top of the schedule effective 7/1/96. County would make the additional step 5% above the current top step. Union would make the additional step 3% above the current top step. Both parties agree that each employee at the top of the current schedule will advance to the new step on that employee's anniversary date. | |
| Insurance: Increase current cap to \$410 without retiree health insurance. Shift Bidding: Status quo. | Insurance: Reduce the premium cap from the current \$400 per month to \$390 and add a contribution of \$25.88 per month per active employee for retiree health insurance for that employee (effective the first day of the month following the date of this Award). Shift Bidding: Continue existing letter of agreement, subject to a re-opener |

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| | provision on that issue on 7/1/97. |
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15) ARBITRATION: City of Grants Pass / Grants Pass Police Association
ERB CASE #: IA-07-96
ARBITRATOR: Katrina I. Boedecker
DISPOSITION: Employer Package
DATE: June 1997

| EMPLOYER | UNION |
|--|---|
| Representative: Bruce Bischof | Representative: Rhonda J. Fenrich |
| <p>Compensation: 7/1/96 - 2.5% (Based on CPI All Cities Index for September 1995) 1/1/97 - 3% (Based on CPI All Cities Index for September 1996)</p> <p>Insurance: \$350 per month, split any premium increases 50/50.</p> <p>Retirement: 7/1/97 - employees shall pay their 6% contribution to PERS. City will increase wage rate 6.46% to offset the employee contribution and mandated employee FICA contributions.</p> <p>Residency: The City agrees with the Union proposal brought to bargaining, i.e., five miles or 20 min. drive time to their workplace.</p> <p>Duration: Two years.</p> | <p>Compensation: Each year increase wage rates based on the CPI-West Coast Cities September index with a min of 3% and max of 5% on the following dates: 1/1/96 1/1/97 1/1/98</p> <p>Insurance: Increase insurance premium to \$450 per month with the employees paying 10% of any premium increase over that cap.</p> <p>Retirement: Status quo.</p> <p>Residency: The Association had no residency proposal in its last best offer, however, the residency language changes were initiated by the Association during bargaining.</p> <p>Duration: Remain in full force and effect throughout negotiations for a successor agreement. No specific time frame specified.</p> |

16) ARBITRATION: City of Lincoln City / Lincoln City Police Employees

Association

ERB CASE #: IA-02-97
ARBITRATOR: Cathrine Harris
DISPOSITION: Employer Package
DATE: July 1997

| EMPLOYER | UNION |
|---|--|
| Representative: Don Schaefer | Representative: Jaime Goldberg |
| Compensation: 7/1/96 - 2.9% 7/1/97 - Increase equal to U.S. CPI-W (March to March 1997), 2.5% min. 7/1/98 - 2.5% | Compensation: 7/1/96 - 3.1% 7/1/97 - Increase equal to U.S. CPI-W (May to May 1997), 2.1% min. 7/1/98 - Increase equal to U.S. CPI-W (March to March 1998), 2.5%-5% |
| <u>Incentive Pay:</u> Both parties propose to increase the monthly incentive pay premium from \$35 to \$50 for officers with an intermediate or advanced BPSST Certificate. Both parties agree to extend the premium pay to sworn personnel and also to dispatchers. NOTE: The only difference in the incentive pay proposal between packages is that the Employer proposes to implement the change on 7/1/98, the Union on 9/1/97. | |
| Insurance: In the event medical, dental and vision insurance premiums for the period 8/1/97 to 8/1/99 increase a total of more than 15%, employees would be required to make the following co-payments: <div style="margin-left: 40px;"> Single Employees \$ 7.50/m Employee w/1 \$12.50/m Employee w/2 or more \$15.00/m </div> | Insurance: In the event the total premium increases more than 15%, the City may reopen the issue of insurance only. If the City chooses to open on insurance, the Union may reopen on the issue of wages. |
| Vacation Accrual: Status quo. Sick Leave: Status quo. Layoff: Status quo. NOTE: No current contract provision | Vacation Accrual: 1-8 years of service - 10 hours/m 8-14 years of service - 12 hours/m Sick Leave: Modify definition of immediate family as follows: The family shall be the employee's spouse, children (natural or foster), brothers, sisters, parents or grandparents, current mother-in-law or father-in-law, grandchildren, and any person living in the employee's immediate |

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| allowing for "bumping" into a lower classification. | household. Layoff: Permit bumping among "fully qualified" sworn officers based on seniority. |
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17) ARBITRATION: City of Woodburn / Woodburn Police Association
ERB CASE #: IA-09-97
ARBITRATOR: Allen M. Hein
DISPOSITION: Employer Package
DATE: February 1998

| EMPLOYER | UNION |
|---|---|
| Representative: Don Scott | Representative: Daryl Garretson |
| Compensation: 3% increase across the board each year of three-year agreement. <u>Overtime for Court Appearances:</u> Status quo. NOTE: Off-duty officers called back to give testimony are often appointed as court bailiff. <u>Pay for Mandatory Training:</u> Status quo. <u>Incentive Pay:</u> Status quo. NOTE: (2% Current Contract) | Compensation: 5% increase across the board each year of three-year agreement. <u>Overtime for Court Appearances:</u> No "make work" assignments for employees called back to work for court appearances unless there is an additional callback for other work. NOTE: Effect is to double the callback payment. <u>Pay for Mandatory Training:</u> Pay for mandatory training scheduled in conjunction with regularly scheduled hours shall be at straight-time rate. For training with a gap of ten minutes or more, the overtime rate shall be paid. Callback also applies. <u>Incentive Pay:</u> 3% premium pay for bi-lingual (Spanish and Russian) |
| Cancellation of Vacation: Status quo. | Cancellation of Vacation: City shall pay all non-recoverable expenses for a |

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| <p>Term of Agreement: CBA effective when signed; only wages retroactive; expiration 6/30/00.</p> | <p>prospective vacation, rather than just non-refundable deposits. Apply to all vacations, not just seniority-bid vacation leave.</p> <p>Term of Agreement: CBA effective when signed; entire agreement retroactive; Evergreen clause, i.e., entire contract would remain in effect during any successor agreement; expiration 6/30/00.</p> |
|---|--|

18) ARBITRATION: Marion County Fire District #1 / IAFF Local 2557
ERB CASE #: IA-17-97
ARBITRATOR: George Lehleitner, Jr.
DISPOSITION: Union Package
DATE: March 1998

| EMPLOYER | UNION |
|--|--|
| Representative: Kathy Peck | Representative: Michael Tedesco |
| <p>Layoff: Layoff to occur within service areas defined as:</p> <ol style="list-style-type: none"> 1. Emergency Response 2. Non-Emergency Transport and Support <p>Based upon performance, skills, and abilities of the employee. "Relatively equal" ratings will be determined by seniority.</p> <p><u>Bumping:</u> Bumping in another service area tied to prior experience and current skills and qualifications.</p> <p>Agree to meet with the Union to discuss the development of a performance standard for layoffs.</p> <p><u>Recall:</u> Recall in inverse order.</p> | <p>Layoff: Layoff to occur in inverse order of seniority within service area defined as:</p> <ol style="list-style-type: none"> 1. Fire suppression and emergency response. 2. All other bargaining unit positions. <p><u>Bumping:</u> Bumping in another service area tied to prior experience and current qualifications.</p> |

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| <p><u>Seniority</u>: Considered as a factor for promotion.</p> | |
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19) ARBITRATION: Clackamas County / Clackamas County Peace Officers Association

ERB CASE #: IA-16-97
ARBITRATOR: William H. Dorsey
DISPOSITION: Employer Package
DATE: May 1998

| EMPLOYER | UNION |
|---|---|
| Representative: David W. Anderson | Representative: Richard G. Black |
| Compensation: 7/1/97 - 3% 7/1/98 - 2.5% 7/1/99 - 2.5% | Compensation: 7/1/97 - 3.5% 7/1/98 - 3.3% (Based on known Portland CPI-W 12/31/96-12/31/97) 7/1/99 - 2.5%-4% (Based on Portland CPI-W from 12/31/97-12/31/98) |

20) ARBITRATION: Klamath County / Klamath County Peace Officers Association

ERB CASE #: IA-07-97
ARBITRATOR: Herman Torosian
DISPOSITION: Union Package
DATE: June 1998

| EMPLOYER | UNION |
|---|---|
| Representative: C. Akin Blitz | Representative: Rhonda Fenrich |
| Compensation: 7/1/97 - 2% 1/1/98 - 5% 1/1/99 - 2.5% 1/1/00 - 2%-4% (Based on CPI-All Cities) | Compensation: 1/1/97 - 3% 1/1/98 - 3% 1/1/99 - 5% 1/1/00 - 2.5%-4% (Based on CPI-All Cities) |

1/1/01 - 2%-4% (Based on CPI-All Cities)

Working out of Classification:

Employees assigned to full duties in a higher class in excess of 1-full day shall receive 5% premium pay for all hours worked.

Clerical employees in the corrections facility who operate master control, take fingerprints, or perform prisoner searches for at least 30 min., shall be paid at Step-1 Corrections Officer scale rounded to the nearest hour.

Insurance:

1/1/98 - County paid insurance premiums will be limited to \$355 per month. Increases in excess of this amount shall be paid by the employee.

Vacation: Status quo.

Sworn Officer Holiday: The Sheriff may manage holiday accruals and direct time off when an employee is not cooperating in scheduling holiday time off.

Duration: 5 year contract.

Insurance:

1/1/97 to 1/1/99 - County will continue to pay full health insurance benefits at current level.

1/1/99 - Increases of more than 6%, employees will pay 10% of the increase.

1/1/00 - Increases of more than 6%, employees will pay 10% of the increase.

1/1/01 - Increases of more than 6%, employees will pay 10% of the increase.

NOTE: If premiums increase over 10% in any single year after 1/1/99, parties may open the contract to negotiate insurance only.

Vacation: Increase monthly vacation accrual by 1-hour at 10, 15, and 20 years of service.

Delete the increase in accumulation at the 9th year of service.

Duration: 4 year contract.